

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**SOHO HOUSE NEW YORK, LLC
Employer**

- and -

CASE NO. 2-RC-23004

**LOCAL 971, INTERNATIONAL SHIELD OF LABOR ALLIANCES
Petitioner**

- and -

**NEW YORK HOTEL & MOTEL TRADES COUNCIL, AFL-CIO
Cross-Petitioner**

DECISION AND DIRECTION OF ELECTION

The Soho House New York, LLC, herein the Employer, is a private club that offers lodging, restaurant and bars, meeting rooms, a cinema and a pool to its members and guests. Local 971, International Shield Of Labor Alliances, herein the Petitioner, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. During the proceedings, Petitioner amended its petition and is seeking to represent a unit of all employees, excluding lifeguards and statutory exclusions.¹ The New York Hotel & Motel Trades Council, AFL-CIO, the cross-petitioner, seeks to represent a unit of all housekeeping, food and beverage, maintenance and PBX employees, excluding front desk employees, club receptionists, spa employees,

¹ Based on the record evidence, all parties agreed that lifeguards are hired on a contract basis and are not employees of the Employer and therefore, are properly excluded from the petitioned-for unit.

projectionists, lifeguards and statutory exclusions.² The Employer contended that the only appropriate unit included housekeeping, food and beverage, PBX employees, as well as, front desk employees, spa employees, the pastry chef and sous chefs, but excluding maintenance employees, housekeeping floor supervisors, a delivery supervisor, the lifeguard and all statutorily excluded employees. In the alternative, the Employer stated that the only appropriate unit here would be a wall-to-wall unit proposed by Petitioner.

Upon the petition and cross petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Based upon the entire record in this matter³ and in accordance with the discussion below, I conclude and find as follows:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. The parties stipulated and I find that the Soho House New York, LLC, a limited liability corporation incorporated in Delaware with an office and place of business located at 2935 Ninth Avenue, New York, New York (the only facility involved herein), is a private membership club which furnishes food and beverages, entertainment and recreational facilities for its members.

² In addition to the lifeguards, the parties stipulated that personal trainers be excluded from the unit as they are "on call" employees that should be excluded from the unit as casual employees. At the close of the hearing, Cross-petitioner specifically sought to exclude the sous chefs and the pastry chef as statutory supervisors.

³ The briefs filed by the Employer and Cross-petitioner herein have been duly considered.

Annually, in the course and conduct of its operations, the Employer derives gross revenues in excess of \$500,000, and purchases and receives supplies and materials valued in excess of \$5,000, directly from suppliers located outside the state of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that Local 971, International Shield of Labor Alliances, is a labor organization within the meaning of Section 2(5) of the Act.

The parties also stipulated and I find that New York Hotel & Motel Trades Council, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

5. Petitioner in its amended petition seeks to represent all full-time and regular part-time employees, excluding all other employees, office clerical employees, professionals, guards and supervisors as defined by the Act. Cross-petitioner seeks to represent all housekeeping employees, food and beverage employees, maintenance employees and PBX employees, excluding front desk employees, the club receptionist, spa employees, the projectionist, the lifeguards, office clerical employees, professionals, guards and supervisors as defined by the Act. The Employer contends that an appropriate unit is either the unit petitioned-for by Petitioner, or a unit composed of all housekeeping employees, food and beverage employees, the pastry chef, the sous chefs, the PBX employees, front desk employees, club receptionist and spa employees, but excluding maintenance employees, housekeeping floor supervisors, a delivery supervisor, the life guards, office clerical employees, professionals, guards and supervisors as defined by the Act.

As evidenced at the hearing and in the briefs, the parties disagree on whether the classifications of front desk employees, the club receptionists, the spa employees, the maintenance employees, the pastry chef, the sous chefs and the housekeeping floor supervisors should be included in an appropriate unit. I have considered the evidence and the arguments presented by the parties on these issues and as discussed below, I find that the unit petitioned-for by the Petitioner is an appropriate unit, while cross-petitioner's unit which seeks to exclude the front desk employees, PBX operators, club receptionist, spa employees and projectionists, is not. The record establishes that these employees are part of a highly integrated operation and their exclusion from the unit is not warranted. While both the Employer and Cross-petitioner would exclude the projectionists the record fails to disclose any basis to do so and they are included in the wall-to-wall unit sought by petitioner. Similarly, maintenance employees are part of the Employer's highly integrated operation and must also be included with the other employees that comprise the wall-to-wall unit. I further find that the Employer has failed to prove that the housekeeping floor supervisors possess supervisory indicia and therefore, they should be included in the unit. Finally, I find that the record is insufficient for me to determine the supervisory status of the pastry chef and the sous chefs and they shall be permitted to cast challenged ballots.

To provide a context for my discussion, I will first provide an overview of the Employer's operations.

I. THE EMPLOYER'S FACILITY

The Employer is a private members club and hotel on Ninth Avenue in what is known as Manhattan's meatpacking district. The members and guests enjoy various amenities offered at the facility beyond the guest rooms, such as the restaurants and bars, meeting rooms, a cinema, spa and roof deck pool. The club was conceived as the New York satellite location for the first Soho House which opened in London about ten

years ago. The Employer predominantly serves its London members while they are visiting New York and is oriented toward the film and media industries.

The Employer occupies all but the second floor of the building in which it is housed. The basement houses a small engineering/maintenance shop and storage space, including a luggage room and a garbage room. The first floor entrance opens to the lobby and the front desk. The twenty-four guest rooms are spread throughout the third, fourth and fifth floors. In addition, the third floor houses the spa, called the Cowshed, which includes treatment rooms and a gym. The fourth floor has a cinema, a function room called the White Room and offices for the deputy general manager and the communications and the housekeeping departments. The library occupies the fifth floor which also provides storage space for the food and beverage (F & B) department and the mini-bar inventory. The sixth floor is “the club” which is comprised of the restaurant and bar area, the Drawing Room or lounge area and the Games Room. The coat check and the F & B managers’ offices are also located on this floor. Finally, the rooftop swimming pool has a deck for lounging where guests can drink and snack. The rooftop also houses the mechanical equipment for the building, such as the boilers and the elevator room.

II. THE SUPERVISORY STRUCTURE

The general manager, Mark Somen, is responsible for both financial matters and the overall operation of the business. His direct subordinates, which he refers to as the leadership team, include the deputy general manager, Guy Chetwind, who is primarily responsible for the daily operations; the human resources (HR) manager Carolena Nunez, who is responsible for processing payroll and dealing with employee benefits and other personnel issues; the executive chef Elliot Kettley; and the marketing manager.

The following department heads report to Chetwind: front desk manager Yvette Jong, reservations manager Emily Baggan, food and beverage director Erin Bellard, executive housekeeper Cheryl Delespinasse, chief engineer Eugene Ruderman, and spa manager Heather Hannig. Hiring is done by the department heads. They are responsible for the accuracy of the employee sign-in sheets. That information is entered into an Excel spreadsheet and e-mailed to HR. After review, HR sends the information to Somen for final approval. The department heads conduct bi-weekly meetings regarding operational issues.

Somen implemented a “manager on duty” position so that someone is officially “in charge” of running the entire club at all times. Some of the department heads and the managers rotate through this position. The manager on duty walks through of the entire building and completes a checklist of staffing, maintenance and member issues. Further, the manager on duty has the authority and discretion to transfer staff. As an example, a front desk employee may be switched to the rooftop to greet guests if the manager on duty observes that one area is busy and the other is slow.

III. TERMS AND CONDITIONS OF EMPLOYMENT

The Employer employs about 230 people, including managers. Every employee attends a half-day orientation process wherein the employee receives a copy of the handbook and tours the facility. The employee handbook describes the benefits that are provided to all employees, such as medical insurance, dental insurance, vacation and sick days, holidays and access to the club for dinner.

With respect to medical benefits, the managers hired more than three months ago have their health insurance paid fully by the Employer. That is, managers who were hired with the promise their insurance would be paid by the Employer have been “grandfathered” and the Employer pays all of their medical insurance. Managers, on the other hand, who were hired within the last three months, contribute 50/50 to the plan.

Accordingly, newly hired managers, such as the roof manager Kristen, the spa manager Heather Hannig and the chief engineer Eugene Ruderman, pay 50/50 for their medical benefits. The floor supervisors in the housekeeping department whose status is in dispute who have been employed longer than three months, contribute 50/50 to their medical coverage like all of the other employees. Dental benefits are offered to the managers and employees at the same rates.

After a 90-day introductory period, all managers and full-time employees get four sick days, three personal days and six paid holidays. Hourly employees scheduled to work on a holiday earn time and half; whereas, salaried employees work the holiday in lieu of another day-off. All non-manager employees sign-in and sign-out.

The butlers, mini-bar attendants and restaurant servers wear a vest and tie. The bartenders wear light colored shirts. The housekeepers wear khaki pants and a black shirt which are provided by the Employer. The front desk employees and the doorman must be clean and well-pressed but they do not wear a specific uniform.

IV. DEPARTMENTS AND EMPLOYEE CLASSIFICATIONS

Front Desk:

The front desk manager, Yvette Jong, testified that the doorman, eight front desk agents, four guest list clerks, about seven butlers and the minibar butler report to her.

The doorman opens and closes the door for guests, hails cabs and assists with luggage. He works in the evening from 6pm to 2am and earns \$15 per hour.

The front desk agents are situated at the desk in the lobby and they mainly check guests in and out, but they also troubleshoot complaints and expedite special requests from guests. Sometimes, they also tag luggage for storage if the butler is not available. They work three shifts (7:45am -4:15pm; 3:30pm to midnight and midnight to 8am) with one to four agents per shift and earn \$16 per hour.

The primary function of the butlers is to show guests to their room and help with their luggage, but they also help with room service when needed. They fulfill any special requests from guests, such as bringing champagne to, or putting flowers in a room. They either work on the daytime shift from 7:30am to 4pm or the evening shift from 4pm to midnight. If a special request is made by a guest overnight, the front desk agent will at times personally perform the task or ask the doorman to carry out the request. The butlers and the front desk agents cover each other for breaks. The butlers earn \$12 per hour.

The guest list clerks are located at the front desk but they only work in the evening either from 6pm to midnight or 6pm to 2 am. They ensure that everyone who enters the club is a guest or a member, but they also help out with luggage and relay requests to the butlers and the housekeeping staff. They earn \$16 per hour.

The minibar butler is stationed in the lobby but he restocks all of the minibars throughout the facility. The restaurant or club on the 6th floor shares inventory with the mini-bar and therefore, the minibar butler accounts for any stock, such as glassware or nuts, through the restaurant account. Further, he visits the occupied guest rooms everyday. His shift is from 8am to 4:30 pm and he earns \$15 per hour plus 6% of sales.

Jong testified that there is a front desk agent who had previously worked as a butler and minibar butler. Apart from covering each other for breaks, Jong further claimed that the front desk employees have covered the butler duties for vacations. In terms of work performed, Jong claimed that all of the classifications that report to her also have a duty to repair the audio visual system, even though she conceded that the engineering department has this responsibility, too.

Reservations:

The reservations manager, Emily Baggan,⁴ works Monday through Friday, from 8 am to 6 pm, on the fourth floor in the Communications office. Baggan takes reservations and oversees the other two employees in her department who are referred to as PBX operators.⁵

Denise Petri is a full-time PBX operator (which sometimes referred to as the switchboard operator) and works Monday through Friday, from 8am to 4:30 pm. Like Baggan, she is a salaried employee earning about \$40,000, annually. While her main duty is answering the switchboard and directing all incoming calls, she also answers e-mails and sends out reservation confirmations. In addition, she is responsible for ordering stationary and general office filing.

The part-time PBX operator, David Hall, works from 11am to 7pm, on the weekends. He also takes over from Petri three nights a week, from 4:30 pm to midnight. He earns about \$16 per hour. The other two night shifts (which are usually Wednesday and Thursday) are covered by a front desk employee. In the event the switchboard is not manned, the front desk employees or the club receptionist answer the phone and take reservations. The front desk employees, the club receptionist and the PBX operators provide coverage for each other during breaks and vacations.

Food and Beverage:

The food and beverage director Erin Bellard has been in her position for about two months. Bellard is responsible for payroll for all food and beverage employees. The restaurant manager, the beverage manager, the rooftop manager, the drawing room manager, the guest relations manager, the functions manager, and the special events manager all report to her.

⁴ Baggan was hired as a club receptionist, transferred to the front desk and nine months later was promoted to reservations manager.

⁵ Baggan claimed that the front desk manager evaluates the PBX operators.

Under the restaurant and beverage managers, there are assistant restaurant managers and an assistant bar manager who oversee the servers, bussers and bartenders. The delivery manager, Tito, is an hourly employee who reports to the bar manager. Three receivers or bar backs report to work in the morning to receive and stock the beverage and fruit inventory. The delivery manager helps the bar manager count inventory.

According to the employee list, it appears that the restaurant staff is comprised of about sixteen servers, seventeen bussers, five service bar attendants and nineteen bartenders, thirteen bar backs and fourteen club receptionists. In addition to tips, the servers who work at night earn \$3.85 per hour. The Employer pays the day staff slightly higher hourly wages (usually \$6.50 per hour) to compensate for slower business. Similarly, the bartenders make \$4.50 per hour at night and about \$10 per hour during the day shifts, plus tips.

Generally, the staff on the rooftop is interchangeable with the staff in the restaurant, the drawing room and the bar. The servers may be scheduled to work at different outlets during a week.

The club receptionists earn \$16 per hour and the lead club receptionists earn \$18 per hour. They spend minimally five days cross-training: one day at the front desk; one day on room service; one on reservations; one day running tables; one day on guest lists and membership. They report to the roof manager Kristen and she handles their sign-in sheets. Club reception is manned seven days a week, from 6am to 2 am.

Primarily, the club receptionists greet guests at the host stand outside the restaurant and on the rooftop entrance to the bar. They check the guests' reservations and escort them to their tables. On the rooftop, the club receptionists also pour water and help bus the tables. In addition, the club receptionist handles room service orders by filling out an order form and handing it off to a server.

Club receptionists also take reservations for all of the dining areas and for the cinema. The restaurant reservations are done manually and are kept in a huge book. Their computer is connected to the Employer's network and they receive e-mails for reservations. The front desk agents and managers use this same software and network.

Further, as stated above, there are three different phone lines: one just for club reception; one for room service; and a general line for house calls which the PBX operators (or switchboard which is located on the fourth floor) answers. When the switchboard operators leave for the day, the front desk agents and the club receptionists answer that line. If a club receptionist is absent or on break, a front desk agent substitutes. For vacations, the roof manager and the front desk manager coordinate schedules to interchange personnel for coverage. On a daily basis, the front desk agents and the club receptionists substitute for each other for breaks. Recently, an employee transferred from club receptionist to a guest list position at the front desk. The club receptionists also receive and log all lost and found items; the log is shared with the front desk staff who also receives lost and found items. Club receptionists sometimes provide coverage for the PBX operators.

With respect to the food, the executive chef Elliot Kettley is responsible for running the three kitchens and has a staff of about twenty-five employees. He ensures that the staff is trained, the product is consistently of a high quality, makes menu suggestions and manages the food costs.

The head chef position for the front kitchen is currently vacant. The head chef of the bar kitchen or back kitchen is Mark Blatchford. In addition to working the line or participating in cooking, the head chefs are responsible for making sure that the food is consistent. They also assign and transfer staff depending on which kitchen is busiest. They keep track of sign-in sheets but the executive chef is responsible for the payroll.

Neal Howell and David Philpot are sous chefs and they spend 80% of their time actually working on the line or in the prep kitchen and the rest of their day is spent directing the staff and ordering food supplies. Somen was unsure if they sign in and out. Howell works mainly in the bar kitchen or the back kitchen. He attends weekly meetings with the other sous chef, the head chef and the executive chef to discuss specials, any menu changes, staff and upcoming functions. When the head chef Mark Blatchford is not present (which is 50% of the time), Howell “looks after” the bar kitchen. He assigns work to the employees every day so that each section is ready for service. He guides employees who are not performing their assigned tasks correctly but he does not formally evaluate employees’ work. He does not participate in the hiring process and has never disciplined or recommended discipline or fired an employee. In fact, he was unsure of how many employees have been fired or the reason for their discharges. He does not schedule employees or approve time off. The record is virtually silent regarding the duties of Philpot.

Approximately twenty kitchen cooks earn from \$12 to \$16 per hour and about ten dishwashers or porters are paid \$8 per hour.

The pastry chef, Lorraine Delcastillo, reports to the executive chef. She is the creative force behind the dessert menu. As such, she creates a different dessert special every one or two weeks. Coming up with the idea for a special and executing it takes a few days’ time. Further, the Employer just started offering an afternoon tea and she designed many of the components of the menu. She is also responsible for the dessert inventory. She is salaried and does not sign in or out.

Even though Delcastillo works during the day, she is assisted by the two pastry cooks who work at night. She prepares daily prep lists with the components of the desserts and explicit instructions on exactly how to make the dessert. For new items, she explains how to make it. She states that she corrects their work and as an example

of this, she states that she instructed an assistant on how to properly fold in egg whites when making chocolate mousse although it appears from the record that she corrected the item in question herself. She testified that she is responsible for ensuring that all of the desserts are properly prepared and are of a high quality. The record is clear that she does not hire or fire employees. During her three months on the job, she has not disciplined the pastry cooks. She does not schedule, approve time-off or transfer the employees. She does not attend the management meetings and has never acted as the “manager on duty.”⁶

Housekeeping:

Executive housekeeper Cheryl Delespinasse has an assistant executive housekeeper, Nicholas Santana. Together with Somen and HR, Delepinasse has the authority to hire, fire and approve time off for all the employees in her department. Both Delespinasse and Santana schedule the employees and assign overtime which is a rare occurrence. Santana takes care of payroll and is responsible for linen inventory and purchasing supplies. In that regard, he ensures that the housemen remove and replenish an adequate towel supply in the pool area. He also inspects the rooms. He participates in the evaluation process by giving Delespinasse feedback on employees’ work. Delespinasse and Santana handle employee complaints regarding the equity of work assignments. She created a work sequence which is the standard for cleaning a room. The sequence varies depending on whether the room is being cleaned for check out or if the room is occupied.

About ten housekeepers and two housemen work on the morning shift and three housemen work in the afternoon. The overnight crew has regular duties and the crew consists of one housekeeper, along with six housemen (four of whom work per shift).

⁶ Delcastillo corroborated that the sous chefs attend the regular weekly management meetings with the head chef and the executive chef.

The room attendants make the beds, vacuum, dust, clean bathrooms and generally clean about five rooms each. The housemen work in the back of the house, cleaning back landings, public space, hallways, receive linen, shampoo rugs, buff tiles and keep track of the line used at the pool. They earn between \$15-16/hour.

Delespinasse recently implemented the floor supervisor positions. Taschea Heath works the morning shift and Richard Rodriguez is on the night shift. They earn \$1.25 more than the housekeepers. They are paid time and half for holidays and are eligible for overtime. Heath attends the morning managers meeting which is a club-wide meeting where they discuss the day-to-day affairs of the club.

In the morning, Heath does a “walk through” of the club to inspect the premises. She prepares a room attendant worksheet based on a print out report from the front desk and determines who gets what rooms to clean based primarily on the size of the room. She spends about 80% of her day inspecting the rooms to ensure the cleanliness is up to par with the club’s standards. If she discovers a problem, she directs the housekeeper to correct it. She spends the other 20% of her time assisting the housemen with their work. She also trains new employees and shows them the sequence mentioned above that should be followed in performing their work. She is responsible for updating the attendance records of all of the housekeepers and housemen on a weekly basis. While the Employer maintains that employees can be disciplined based on those records, there was no evidence presented that this has occurred.

At night, Rodriguez ensures that the “turn down” service is taken care of and rectifies any guest complaints. Delespinasse gives the housemen their assignments at 4pm when they report to her for work. She verbally “hands over” any issues or problems to Rodriguez when he arrives at work. She prepares the assignments for the employees and Rodriguez distributes them. Rodriguez is responsible for ensuring that whatever

assignment is given to the night staff is being completed on a timely basis. He spends 90% of his time making and overseeing assignments. He also assists when needed.

With respect to discipline, Heath reported an employee named Rowena because she constantly complained about work assignments. Delespinasse claimed that a verbal warning resulted from Heath's report. This is the only incident that she could recall. On cross-examination, Delespinasse admitted that Santana also had lodged numerous complaints about Rowena and further conceded that when she met with Rowena, Heath was not present. Nothing was documented, but a verbal warning was issued and Rowena promised to try to cooperate more with the managers.

Further, Delespinasse testified that Rodriguez recommended discipline in one instance. The specific incident involved a houseman named Jean Carrie, who had ignored Rodriguez' directive to put away a linen delivery. Rodriguez involved a manager on duty, Matt Hobbs, to resolve the issue. Hobbs said that he would send Carrie home, as long as, Rodriguez was comfortable working alone. Hobbs instructed Rodriguez to appear for a meeting at noon the following day. Notwithstanding Rodriguez' recommendation that Carrie be discharged, Delespinasse and HR decided to suspend Carrie. Delespinasse informed Carrie of his suspension without Rodriguez in the room. She conceded that other room attendants could report problems with housekeepers and she would investigate the incident in the same manner that she investigated the Rodriguez/Carrie incident. If the case warranted it, she would issue discipline.

With respect to evaluations, Delespinasse claimed that she meets with Heath and Rodriguez prior to completing the housekeepers' and housemen's evaluations and gets their input regarding the quality of work or any concerns that they have regarding employees. While she stated that these evaluations – which she alone signs - are used for determining raises for the housekeepers, the record establishes that it is Somen who determines wages and raises for all of the employees.

Notably, Heath's most recent evaluation dated May 23, 2005, indicates that she was "moved" from room attendant to a "working supervisor." Rodriguez' undated evaluation indicates that his duty as "shift supervisor" is to make sure that all of the work on his shift is completed.

Engineering/Maintenance:

The chief engineer, Eugene Ruderman, is assisted by two engineers, Leo Slavin and Sergio Markovsky. Slavin works Monday through Friday from 8 am to 4:40 pm. He has general construction skills and mechanical skills. He has about thirty years experience in the industry and earns \$19 per hour. Markovsky works three weekdays, from 5:00 pm to 10:00 pm and Saturday and Sunday, from 8am to 4:40 pm. He is an engineer with licenses in refrigeration, standpipe and sprinkler systems. He earns \$18 per hour. Ruderman organizes preventative maintenance and fixes any problems with the HVAC, electrical and plumbing systems. The engineers monitor the boilers and valves, fix leaks and perform small carpentry and painting work. Ruderman also assigns them corrective maintenance which is sometimes brought to his attention by the front desk. The major systems are located in the basement and the roof, but the engineers work throughout the building.

Spa:

The spa manager, Heather Hannig, oversees a staff of four receptionists, three estheticians and six massage therapists (both of whom require licenses). There are also about five personal trainers who appear to be "on call" employees. The estheticians and the massage therapists earn \$9 per hour in addition to 30% of the treatment fee.

The spa's hours of operation are 6am to 10 pm, and therefore, if a guest wants to book an appointment after 10 pm, the front desk will take tentative bookings and relay the information to the spa receptionist during their hours of operation. The spa receptionists generally only work in the spa and answer a phone that only rings to them,

but from time to time, they cover shifts in club reception. They occasionally cover PBX operator shifts and covered for the coat check attendant once in a while. All in all, spa receptionists cover shifts for other employee classifications roughly four times a month.

The housekeepers clean, replenish towels and restock the toiletries in the spa, just as they do in the guest rooms. The overnight housekeeping staff deep cleans the spa because there are no clients at that time. The engineer checks the steam room and the air conditioning.

Cinema:

The Employer operates a cinema with 43 seats on the fourth floor. This facility has 5 or 6 screenings per week and is staffed by a head projectionist and a second projectionist. The head projectionist reports to the marketing manager and works approximately 50 hours each week. The second projectionist works about 30 hours per week. On Saturdays, the Employer provides special events for children and a projectionist is on hand to operate the equipment which was described as more complex than operating a DVD player. The record is silent with respect to the duties of the head projectionist and no party asserted this position was supervisory. Both the Employer and Cross Petitioner seek to exclude the projectionist while the Petitioner sought to represent a wall-to-wall unit.

V. INDUSTRY PRACTICE

Sara Dombroff, the assistant to the general counsel of the cross-petitioner, testified that the Union maintains a data base of all employee classifications for the employers with whom it has collective-bargaining agreements. Of twenty-nine units, there are twenty-five clubs where the front desk employees are not included in the unit. The record is unclear as to whether these units were certified by the Board. The Union has contracts with four clubs that include the front desk agents.

VI. ANALYSIS

Appropriate Unit Determination:

In *Arlington Hotel Co.*, 126 NLRB 400, 404 (1960), the Board announced a general rule of hotel unit determination finding only a hotel-wide unit to appropriate and holding, “in the hotel industry, all operating personnel have such a high degree of functional integration and mutuality of interests that they should be grouped together for collective-bargaining purposes.”

However, in *Omni International Hotel*, 283 NLRB 475 (1987), the Board retreated from the *Arlington* rule and specifically reaffirmed its commitment to determine the appropriate unit in the hotel industry on a case-by-case basis utilizing the same traditional community of interest criteria used in other industries. This general criterion includes distinctions in skills and functions of particular employee groups, the supervisory structure, the employer’s organizational structure, any differences in wages and hours, as well as, integration of operations, employee transfer, and interchange and contacts. Further, the Board in *Omni* reiterated the well-established principle that under the Act, a union may petition for an appropriate unit, and is not required to seek the most appropriate unit.

In the instant case, the Employer operates a club which is a composite of restaurants, bars and guest rooms that share a common purpose of providing lodging, dining and related services to its guests and patrons. Unlike many hotels with large numbers of guest rooms, this club has only 24 rooms and its operation is a highly integrated one. Thus, while the employees perform a variety of duties, their common objective is to provide a highly integrated group of services, directly and indirectly, for the club’s guests. The record shows that all of the employees enjoy the same benefits and are covered by the same policies and procedures. While the average earnings of

employees who make tips was undisclosed, the record reveals that most of the employees earn between \$12 and \$16 per hour⁷.

Further, the record is clear that the Employer maintains centralized control of the day-to-day operations. Somen is the ultimate authority on personnel decisions, such as, hiring, firing and wage increases. Somen has created a leadership team whereby all department heads report to his deputy general manager. Moreover, his “manager on duty” program reflects the integrated nature of the departments.

The Employer’s high degree of functional integration and centralized policymaking is also reflected in the substantial overlap of employee functions and frequent employee contact. Thus, housekeeping employees clean the guest rooms, the front desk and public spaces, as well as, the spa. The butler and minibar butler interact with the front desk agents in the lobby and use the same inventory as the restaurant servers. The front desk agents, the PBX operators and the club receptionists substitute for each other for breaks and vacation. Further, the record demonstrates that employees have transferred between these departments. The maintenance employees work throughout the building in conjunction with virtually all other employee classifications. While their wages are slightly higher, this is merely reflective of their long years of experience in the industry. Room service, the dining room servers, rooftop servers and drawing room servers work on several floors of the hotel and appear to be interchangeable in that a server may be scheduled to work in different outlets during the same week or transferred to a busier outlet during their shift. The overall record amply demonstrates that although each employee group has a primary function, the employees assist each other, work in close contact and generally work toward the common goal of providing guests and members services.

⁷ It appears that the fact that Petie is a salaried PBX operator is an anomaly resulting from her tenure with the Employer.

Cross Petitioner seeks to exclude the front desk employees on the basis of their distinct skills and job duties. In particular, they rely on an industry practice of excluding the front desk employees in New York City hotels. As noted above, the Employer here is a club which operates on a much smaller scale than area hotels and its operations are highly integrated. Further, there is no bargaining history between the parties. With respect to the industry practice in the New York metropolitan area, it appears that the front desk personnel are frequently excluded from the unit. The record, however, also demonstrates that in some instances the front desk employees are included in the unit which is consistent with the Board's case-by-case approach. I, therefore, find that the unit sought by cross petitioner is not an appropriate unit and that the wall-to-wall unit sought by Petitioner is an appropriate unit. *Ramada Inns, Inc.*, 278 NLRB 691 (1986); *ACL Corporation*, 273 NLRB 87 (1984).

Supervisory Status of Floor Supervisors in the Housekeeping Department:

It is well established that a party seeking to exclude an individual or group of employees based upon their status as supervisory employees bears the burden of establishing that such status, in fact, exists. *NLRB v. Kentucky River Community Care*, 121 S. Ct. 1861, 1866-1867 (2001); *Benchmark Mechanical Contractors, Inc.*, 327 NLRB 829 (1999); *Alois Box Co., Inc.*, 326 NLRB 1177 (1998). Thus, "whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, we will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Further, the Board has cautioned that in construing the supervisory exemption, it should refrain from construing supervisory status "too broadly" because the inevitable consequence of such a construction is to remove the individual from the protections of the Act. *Northcrest Nursing Home*, 313 NLRB 491 (1993); *Phelps Community Center*, *supra*, at 492 (1989). When evidence is inconclusive on particular indicia of supervisory authority, the Board

will find that supervisory status has not been established on the basis of those indicia. *Supra* at 490.

Applying the foregoing standards to the facts of this case, I find insufficient support in the record to conclude that the floor supervisors are statutory supervisors. The record does not establish that they exercise supervisory authority with respect to assigning work or that they effectively recommend discipline or discharge. Instead, it appears that the floor supervisors merely perform a reporting function that is not supervisory under the statute.

As with every supervisory indicium, assignment of work must be done with independent judgment before it is considered to be supervisory under Section 2(11) of the Act. Thus, the Board has distinguished between routine direction or assignments of work and that which requires the use of independent judgment. *Laborers International Union of North America, Local 872*, 326 NLRB No. 56 (1998); *Azusa Ranch Market*, 321 NLRB 811 (1996); *Providence Hospital*, 320 NLRB 717, 727 (1996). The Board has held that only supervisory personnel vested with genuine management prerogatives should be considered supervisors, not straw bosses, lead men, setup men and other minor supervisory employees. *Baby Watson Cheesecake*, 320 NLRB 779, 783 (1995); *Mid-State Fruit, Inc.*, 186 NLRB 51 (1970).

Based on the record, any assignments made by Heath and Rodriguez were minimal and routine in nature and do not require the exercise of independent judgment and, therefore, do not rise to Section 2(11) status. The duties of the housekeepers are set forth in the work sequence established by Delespinasse. The Employer failed to provide any details regarding how often the housekeepers actually break with routine, how much deviation is allowed or how much discretion is actually involved in telling them to perform their assigned functions. *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *Somerset Welding & Steel*, 291 NLRB 913 (1988). Instead, the record suggests that

the housekeepers and housemen perform largely the same duties on a routine basis everyday.

With respect to the Employer's contention that Heath and Rodriguez are responsible for disciplining the employees, the record indicates that they merely reported performance problems to Delespinasse. While the record establishes that Rodriguez spoke to an employee about a work problem, it is also clear that the manager on duty, Hobbs, decided to send the employee home that night. Further, Delespinasse decided to suspend the employee after completing an independent investigation. Similarly, Heath merely reported a problem to Delespinasse and the record suggests that she took action based, in part, on numerous reports from her assistant Santana. Accordingly, Heath and Rodriguez merely reported incidents and their input in the warnings described in the record is not indicia of supervisory authority. *Northcrest Nursing Home*, 313 NLRB 491 (1993); *Pepsi-Cola Bottling Co.*, 154 NLRB 490 (1965).

Supervisory Status of the Delivery Manager:

In its brief, the Employer contends that the delivery manager is must be excluded from the unit because he supervises the bar backs. The delivery manager, Tito, whose last name was undisclosed on the record, is an hourly employee. It appears that his terms and conditions of employment are the same as the other employees in the petitioned-for unit. The only record evidence elicited regarding his duties indicates that he assists the bar manager in tracking inventory. No evidence was adduced regarding his relationship to the bar backs or his role in receiving the beverage orders. Accordingly, I find that the Employer has failed to meet its burden of establishing supervisory status within the meaning of Section 2(11) of the Act.

Supervisory Status of Sous Chefs and Pastry Chef:

As noted above, the Supreme Court, in *NLRB v. Kentucky River Community Care*, supra held that an individual who responsibly directs other employees with

independent judgment within the meaning of Section 2(11) must have sole or significant authority over the work unit. In that regard, the standard for responsible direction and independent judgment includes evidence that the alleged supervisor has been delegated substantial authority to ensure that a work unit achieves management's objectives and is thus "in charge." Further, the evidence must establish that the purported supervisor is held accountable for the work of others. Finally, the evidence adduced must show that the individual exercises significant discretion and judgment in directing his or her work unit.

In the instant case, I find that the evidence is unclear with respect to the authority exercised by the pastry chef and sous chef, Neal Howell and I am unable to determine if they are statutory supervisors who should not be included in the unit. The record demonstrates that Howell is "in charge" of the kitchen during the head chef's frequent absence but does not set forth the level of responsibility he exercises during these situations. The record does establish that Howell performs the same work as his helpers for a substantial period of their work day, but he appears to have defined responsibilities beyond that of his helpers. As an example, he trains new employees and guides cooks in their daily work which requires extensive knowledge of the methods and standards employed by the executive chef. However, it also appears that much of the work is routine. Further, while Howell testified that he is responsible for quality of food that is served and in doing so, he ensures that the work is done properly the record failed to explain in what ways this responsibility for the work is manifested. *Custom Bronze & Aluminum Corp.*, 197 NLRB 397 (1972). The record fails to describe any of Philpot's responsibilities. Thus, I have decided to permit both Howell and Philpot to cast ballots subject to challenge.

Similarly, it is alleged that Lorraine Delcastillo, the pastry chef, is "in charge" of the desserts and the dessert menu. In that regard, it appears that she is responsible for

contributing ideas for the afternoon teas served at the club. Further, her area of responsibility appears to include assuring adequate inventory is maintained. Finally, the record indicates that she assigns work to the pastry cooks and corrects their work. The record however has scant if any examples of such authority and I do not have a basis upon which to decide whether her level of authority is sufficient to find her to be a statutory supervisor.

Based on the record evidence, I will also permit Lorraine Delcastillo to cast a challenged ballot.

In conclusion, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time employees, including doormen, front desk agents, butlers, guest list clerks, minibar butlers, PBX operators, servers, bussers, service bar attendants, bar backs, delivery manager, bartenders, club receptionists, cooks, dishwashers, porters, housekeeping attendants, housemen, housekeeping floor supervisors, engineers, projectionists, spa receptionists, estheticians and massage therapists.

Excluded: All office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

NOTE: The supervisory status of Neal Howell, David Philpot, sous chefs, and Lorraine Delcastillo, pastry chef, remains unclear from the record and they shall be permitted to cast challenged ballots.

Direction of Election

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and

regulations.⁸ Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date of the Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated eligibility period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁹ Those eligible shall vote on whether or not they desire to be represented for

⁸ Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(1) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules. requires that the Employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

⁹ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **September 16, 2005**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

collective-bargaining purposes by the Local 971, International Shield of Labor Alliances or the New York Hotel & Motel Trades Council, AFL-CIO, or neither.¹⁰

Date at New York, New York
This September 9, 2005

/s/ Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

¹⁰ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **September 23, 2005**.